

NOTICE

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2017 IL App (5th) 160209-U

NO. 5-16-0209

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 14-L-1021
)	
JACQUELINE K. LUMPKINS,)	Honorable
)	Barbara L. Crowder,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order is affirmed where the court did not abuse its discretion in partially denying the defendant's motion to vacate the default judgment filed pursuant to section 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2014)) where substantial justice was served.

¶ 2 The defendant, Jacqueline Lumpkins, appeals from the order of the circuit court of Madison County denying, in part, her motion to vacate filed pursuant to section 2-1301(e) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301(e) (West 2014)). For the reasons that follow, we affirm.

¶ 3 On July 23, 2014, the State filed a two-count complaint against the defendant after 27 reports had been made to the Alton police department for incidents occurring at or

near her residence since September 2009. There were reports of multiple peace disturbances; fighting; gunfire; and criminal offenses, such as theft, criminal damage to property, possession of a controlled substance, aggravated battery, mob action, aggravated discharge of a firearm, aggravated battery with a firearm, and first degree murder. The complaint alleged that the defendant's residence was a nuisance property and that the defendant had knowingly maintained this nuisance in that she had allowed a large group of individuals to assemble at her residence, which is located approximately 150 feet from an elementary school, for the purpose of engaging in illegal street-gang activity. The complaint stated that, in March 2014, a notice was served on her outlining the multiple Illinois law violations that had occurred on the property and informing her that further violations would subject the property to forfeiture and/or abatement.

¶ 4 Count I of the complaint was a public nuisance action pursuant to section 37-1 of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/37-1 (West 2012)) and section 9-7-7 of the City Code of Alton, Illinois, and sought an injunctive order prohibiting the defendant from using the residence for a one-year period. The nuisance action was brought against the defendant and Sylvia Lumpkins, the defendant's mother, as owners of the residence. Count II was a claim brought pursuant to the Illinois Streetgang Terrorism Omnibus Prevention Act (Act) (740 ILCS 147/1 *et seq.* (West 2012)) and sought compensatory damages in excess of \$50,000, attorney fees, and punitive damages. This cause of action was brought against the defendant, Sylvia, and several individuals who were identified as members of the "Flyboyz" street gang.

¶ 5 On March 9, 2015, the State filed a motion for default judgment against the defendant, noting that the defendant was served with the complaint by abode service on August 11, 2014, and that she had not filed an answer. On May 8, 2015, the trial court entered a default order against the defendant and set a hearing regarding damages.¹ The damages hearing was held on September 15, 2015, but the record on appeal does not contain a transcript of the hearing.

¶ 6 Following the hearing, the trial court ordered the defendants jointly and severally liable for \$57,819.95 in compensatory damages pursuant to section 35(b) of the Act (740 ILCS 147/35(b) (West 2014)). In making this decision, the court noted that the Alton police department had expended significant monetary and personnel resources in responding to the reports and investigating the criminal activity connected to the defendant's residence. In addition, the court ordered the defendants jointly and severally liable for \$10,000, which represented the State's court expenses and attorney fees. Moreover, the court, citing the nature and frequency of the criminal activity, ordered the defendants jointly and severally liable for \$100,000 in punitive damages pursuant to section 35(b) of the Act (740 ILCS 147/35(b) (West 2014)), which allows the court to impose punitive damages where the defendant is found guilty of actual participation in, or found to be legally accountable for, the illegal street-gang activity. In support of this decision, the court noted that the criminal activity involved over 20 incidents of gang-related activity in a three-year period, including first degree murder and aggravated

¹The motion for default judgment was filed against all of the named defendants, and the default judgment was entered against all of the named defendants except one.

battery with a firearm. Also, finding that the nuisance was maintained with the intentional, knowing, reckless, or negligent permission of the owners, the court also entered injunctive relief pursuant to section 37-4 of the Criminal Code (720 ILCS 5/37-4 (West 2014)), which prohibited the owners from using the premises for one year, beginning September 29, 2015.²

¶ 7 On September 29, 2015, the defendant filed a motion to set aside and vacate the default judgment pursuant to section 2-1301(e) of the Code (735 ILCS 5/2-1301(e) (West 2014)). The motion stated that the defendant had a meritorious defense in that, although her name was on the title of the residence, she was not in control of the property until her mother passed away in March 2015. The motion also stated that the defendant was 55 years old, was employed full-time, and had no felony or misdemeanor convictions. The motion further indicated that she had no knowledge of the criminal activities described in the complaint.

¶ 8 On November 6, 2015, the State filed a motion to deny and/or strike the defendant's motion to vacate the default judgment. In the motion, the State noted that the defendant was served with the following, which gave her notice of the allegations against her: the complaint in August 2014; notice of the default judgment in May 2015; approximately 50 different ordinance violations that formed the basis for the complaint's

²Section 37-4 of the Criminal Code allows the court to enter an order restraining the owners from maintaining or permitting the nuisance and from using the residence for a period of one year where the court finds that the nuisance was maintained with the intentional, knowing, reckless, or negligent permission of the owner. 720 ILCS 5/37-4 (West 2014).

allegations; and notice of at least 24 orders issued by the trial court in September 2014, after she had received service of the complaint, imposing penalties for the numerous ordinance violations. The State further noted that she had failed to answer the complaint, had not attempted to contact anyone about attendance at the default hearings, and did not attend any of the hearings where the ordinance violation penalties were assessed. The State argued that she had not presented any evidence to support her allegation that she had no knowledge of the criminal activities occurring at her residence. The State also argued that she had provided no evidentiary basis for her claim that she was not the residence's owner. In support, the State attached a copy of the February 2006 quitclaim deed for the property, which listed the defendant and her mother as joint tenants.

¶ 9 At the December 18, 2015, hearing on the motion to vacate, the defendant testified that her grandmother had deeded the property to her and her mother as joint tenants but that she became sole owner of the property when her mother died in March 2015. She currently lives in the house with her daughter and her daughter's minor son. She testified that she is employed full-time and earns \$30,000 annually. She testified that, during most of the time covered in the complaint, she worked the midnight shift, leaving home at 9:30 p.m. and returning at about 8 a.m. Because of her mother's health, she switched to the daytime shift in early 2015.

¶ 10 The defendant testified that she was aware of the ordinance violations that addressed the premises' condition and that all of the issues had been corrected. She stated that she was not involved in the criminal activities connected to her residence, and she did not condone or permit the criminal activity committed by the other defendants. She

testified that she did not have the money to pay for the judgment entered against her, and she did not have another place to live. She acknowledged that she was aware of some of the criminal activity and explained that "[h]alf of the time we were probably the ones calling [the police] about the criminal activity." She agreed that there was a school near her residence but did not believe that the criminal activity had occurred at a time when the children would be at the school.

¶ 11 On January 5, 2016, the trial court entered an order granting in part and denying in part the motion to vacate the default judgment. In its order, the court noted that the consideration in setting aside a default judgment under section 2-1301 is whether substantial justice is being done between the parties and whether it is reasonable to compel the other party to go to trial on the merits. The court weighed the following factors to determine whether substantial justice has been done: whether the plaintiff is an Illinois resident; the severity of the penalty to the defendant; the attendant hardship on the plaintiff if required to proceed to trial; the existence of a meritorious defense; and due diligence on the part of the moving party.

¶ 12 The trial court found that the defendant's claim that she was at work during the criminal activity was not credible but noted that it gave some weight to her position when considering the substantial-justice factors. The court noted that there was no dispute that at least 45 criminal activities, including a murder and innumerable ordinance violations, were connected to the defendant's residence during the time that she owned and resided at the premises. The court concluded that the severity of the penalty to the defendant was high in that she was required to vacate her home for a one-year period and that the

attendant hardship on the State if required to proceed to trial was not high. The court further concluded that the defendant had not presented any credible support for a meritorious defense and had failed to establish due diligence on her part for ignoring the proceedings.

¶ 13 Although the court acknowledged Illinois's liberal policy in setting aside default judgments, it noted that it was not required to vacate a default judgment where the defendant had failed to set forth an appropriate argument for reversal. The court concluded that no credible challenge was made to any portion of the judgment other than the argument that the defendant had no other home to live in and did not have \$167,819.95. Thus, the court partially granted the motion to vacate, finding that substantial justice required that the punitive damages award and the injunctive relief award, *i.e.*, requiring the defendant to vacate her residence for a one-year period, be vacated. The court partially denied the motion to vacate in regard to the compensatory-damage award and the \$10,000 assessment for court expenses and attorney fees. The court set the matter for a case management conference to enter a scheduling order for trial on the punitive damages issue and the issue of whether the nuisance, *i.e.*, the illegal street-gang activity, was maintained with the intentional, knowing, reckless, or negligent permission of the defendant.

¶ 14 On March 11, 2016, the State filed a motion to voluntarily dismiss its allegations with regard to the punitive damages and the injunctive relief that required the defendant to vacate her home for one year. On April 29, 2016, the trial court granted the motion. The defendant appeals the court's partial denial of her motion to vacate.

¶ 15 The defendant's first argument on appeal is that the trial court abused its discretion in denying, in part, her section 2-1301(e) motion to vacate the default judgment. To vacate a default judgment within 30 days of its issuance, a party must make a motion pursuant to section 2-1301(e) of the Code, which provides as follows:

"The court may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable."

735 ILCS 5/2-1301(e) (West 2014).

¶ 16 When a court is presented with a request to set aside a default judgment pursuant to section 2-1301(e), the overriding consideration is whether substantial justice is being done between the litigants and whether it is reasonable, under the circumstances, to compel the other party to go to a trial on the merits. *In re Haley D.*, 2011 IL 110886, ¶ 57. In making this assessment, the court must be mindful that the entry of a default judgment is a drastic remedy and should consider all events leading up to the judgment. *Id.* ¶ 69. Relevant factors to consider in determining whether substantial justice has been served include due diligence or lack thereof, the existence of a meritorious defense, the severity of the penalty resulting from the default judgment, and the relevant hardships on the plaintiff if required to proceed to a trial on the merits. *Venzor v. Carmen's Pizza Corp.*, 235 Ill. App. 3d 1053, 1057-58 (1992). This determination must be based on the facts of each case and not made by using a hard and fast rule applicable to all situations. *In re Haley D.*, 2011 IL 110886, ¶ 69.

¶ 17 Whether to grant or deny a motion under section 2-1301 is within the sound discretion of the trial court, and its decision will not be reversed absent an abuse of discretion or a denial of substantial justice. *Bank & Trust Co. v. Line Pilot Bungee, Inc.*, 323 Ill. App. 3d 412, 415 (2001).

¶ 18 Here, the trial court partially granted the motion to vacate regarding the punitive-damages award and the injunctive relief, finding that the severity of the monetary penalty and the injunction outweighed the hardship on the State in going to trial. However, the court partially denied the defendant's motion to vacate with regard to the \$57,819.95 compensatory-damages award, which reflected the amount of police resources expended to investigate the criminal activity connected to the defendant's residence, and the \$10,000 attorney-fees and court-costs award. Following entry of the court's order, the State dismissed the counts relating to the issue of whether the nuisance was maintained with the intentional, knowing, reckless, or negligent permission of the defendant and the injunctive relief that required the defendant to vacate her home for one year.

¶ 19 The defendant argues on appeal that substantial justice requires that the compensatory damages and attorney-fees award also be vacated because she is unable to pay the judgment amount and would consequently lose her home in foreclosure. We disagree.

¶ 20 The defendant has not demonstrated that the trial court denied her substantial justice by partially denying her motion to vacate in regard to compensatory damages and attorney fees. With regard to the first factor, the record reflects a lack of due diligence on the defendant's part where she had notice of the complaint and entry of the default

judgment. Specifically, we note that she was properly served with the State's complaint on August 11, 2014, and the notice of default judgment on May 5, 2015. At no time did she file an answer or appear at the default hearing, despite being aware of the proceedings against her. She also failed to offer any explanation for her lack of action in these proceedings. In addition, she failed to present credible support for the existence of a meritorious defense. She claimed that she did not know about the criminal activity because she was at work when it occurred. It is undisputed that at least 27 reports made to the Alton police department and innumerable ordinance violations were connected to the defendant's residence. Like the trial court, we do not find her testimony credible.

¶ 21 Furthermore, with regard to the third factor, the severity of the penalty, we acknowledge that a judgment in the amount of \$67,819.95 is high for a defendant earning a salary of \$30,000. However, the trial court concluded that substantial justice was done by leaving the compensatory damages and attorney-fees award in place. After carefully reviewing the record, we conclude that the court's decision reflects a careful balance of the severity of the penalties to the defendant and the hardship on the State. First, we note that the damages were assessed against eight individuals in joint and several liability. In addition, a significant amount of resources were expended by the Alton police department to investigate the criminal activity connected to the defendant's residence. Her decision to ignore the court proceedings has also resulted in additional resources expended by the State's Attorney's office. Thus, based on the particular circumstances of this case, we conclude that the trial court did not abuse its discretion in finding that substantial justice required this defendant and the other named defendants to compensate

for the actual damages caused by the numerous criminal activities connected to the defendant's residence and to pay for the State's court costs and attorney fees.

¶ 22 Moreover, we note that, as part of her argument to this court, the defendant argued that the substantial-justice standard does not allow a trial court to vacate parts of a default judgment while leaving other parts in place. However, the defendant has failed to cite any authority for her position. Supreme Court Rule 341(h)(7) requires an appellant to include in its brief an "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). It is well settled that a contention that is supported by some argument but does not cite any authority does not satisfy the requirements of Supreme Court Rule 341(h)(7), and bare contentions that fail to cite any authority do not merit consideration on appeal. *Wasleff v. Dever*, 194 Ill. App. 3d 147, 155-56 (1990). Thus, we refuse to entertain the defendant's argument regarding the applicability of the substantial-justice standard.

¶ 23 The defendant next argues, for the first time on appeal, that the compensatory damages and attorney-fees award were excessive in that the State did not present any evidence in support of the damages award.

¶ 24 Initially, we note that the defendant has forfeited this issue on appeal for failing to raise it in the trial court proceedings. See *Bank of New York Mellon v. Rogers*, 2016 IL App (2d) 150712, ¶ 72. Notwithstanding the forfeiture issue, the defendant has failed to present a sufficiently complete record of the proceedings to support any claim of error. The record does not contain a transcript of the damages hearing, and the trial court's order

on damages does not indicate what evidence the State presented on this issue. Although we recognize that the defendant was not present at the September hearing to request a court reporter, the defendant made the decision not to appear at this hearing. In addition, the defendant has failed to present this court with a bystander's report of the proceedings. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005) (if no verbatim transcript of the evidence of proceedings is obtainable, the appellant may prepare a proposed report of the proceedings from the best available sources). Absent a transcript of the relevant hearing or a bystander's report, we must presume that the trial court's order had a sufficient factual basis and conformed to the law. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Moreover, the record suggests that the State had presented evidence on the damages issue in that the trial court's order stated that it had considered the State's evidence on damages. Accordingly, we affirm the trial court's order, which partially granted the motion to vacate with regard to the punitive-damages award and the injunctive relief that required the defendant to vacate her home for one year and partially denied the motion to vacate with regard to the compensatory-damages award and assessment of court costs and attorney fees.

¶ 25 For the foregoing reasons, the order of the circuit court of Madison County is affirmed.

¶ 26 Affirmed.